

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

JO ANN GILYARD
1177 Dove Way
Fairfield, CA 94533

Registered Nurse License No. 443841

Respondent

Case No. 2012-433

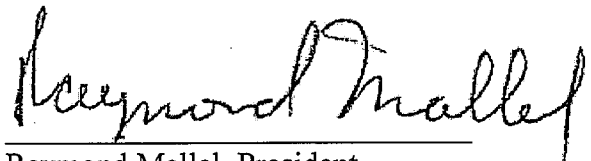
OAH No. 2012021071

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on **February 1, 2013.**

IT IS SO ORDERED **January 3, 2013.**



Raymond Mallel, President
Board of Registered Nursing
Department of Consumer Affairs
State of California

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JUDITH LOACH
Deputy Attorney General
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7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

12 **JO ANN GILYARD**
1177 Dove Way
13 Fairfield, CA 94533
Registered Nurse License No. 443841

14 Respondent.

Case No. 2012-433

OAH No. 2012021071

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

16
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
18 entitled proceedings that the following matters are true:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN ("Complainant") is the Interim Executive Officer of the
21 Board of Registered Nursing. She brought this action solely in her official capacity and is
22 represented in this matter by Kamala D. Harris, Attorney General of the State of California, by
23 Judith Loach, Deputy Attorney General.

24 2. Respondent Jo Ann Gilyard ("Respondent") is represented in this proceeding by
25 attorney Edgardo Gonzalez, Esq., whose address is: 1300 Clay Street, Suite 600, Oakland, CA
26 94612.

27 3. On or about August 31, 1989, the Board of Registered Nursing issued Registered
28 Nurse License No. 443841 to Respondent. The Registered Nurse License was in full force and

1 effect at all times relevant to the charges brought in Accusation No. 2012-433 and will expire on
2 August 31, 2013, unless renewed.

3 JURISDICTION

4 4. Accusation No. 2012-433 was filed before the Board of Registered Nursing
5 ("Board"), Department of Consumer Affairs, and is currently pending against Respondent. The
6 Accusation and all other statutorily required documents were properly served on Respondent on
7 February 15, 2012. Respondent timely filed her Notice of Defense contesting the Accusation.

8 5. A copy of Accusation No. 2012-433 is attached as exhibit A and incorporated herein
9 by reference.

10 ADVISEMENT AND WAIVERS

11 6. Respondent has carefully read, fully discussed with counsel, and understands the
12 charges and allegations in Accusation No. 2012-433. Respondent has also carefully read, fully
13 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
14 Order.

15 7. Respondent is fully aware of her legal rights in this matter, including the right to a
16 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
17 her own expense; the right to confront and cross-examine the witnesses against her; the right to
18 present evidence and to testify on her own behalf; the right to the issuance of subpoenas to
19 compel the attendance of witnesses and the production of documents; the right to reconsideration
20 and court review of an adverse decision; and all other rights accorded by the California
21 Administrative Procedure Act and other applicable laws.

22 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
23 every right set forth above.

24 CULPABILITY

25 9. Respondent admits the truth of each and every charge and allegation related to the
26 second and fifth causes for discipline contained in Accusation No. 2012-433. Respondent admits
27 the charges and allegations related to the first cause for discipline contained in Accusation No.
28 2012-433, except Respondent denies that she was "high on drugs (marijuana) and alcohol while

1 working." Respondent admits that there is a factual basis for the imposition of discipline as to the
2 third, fourth, and sixth causes for discipline contained in Accusation No. 2012-433.

3 Respondent agrees that her Registered Nurse License is subject to discipline and she
4 agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

5 MITIGATION

6 10. Respondent contends that as to the third cause for discipline contained in Accusation
7 No. 2012-433, she administered pain medication (prm) to the patient, and the patient was no
8 longer in pain.

9 11. Respondent contends that as to the fourth cause for discipline contained in Accusation
10 No. 2012-433, the patient's IV line was not infiltrated when Respondent left the patient.

11 12. Respondent contends that as to the sixth cause for discipline contained in Accusation
12 No. 2012-433, the diabetic patient was assigned to a traveler nurse, whom Respondent was
13 assisting.

14 CONTINGENCY

15 13. This stipulation shall be subject to approval by the Board of Registered Nursing.
16 Respondent understands and agrees that counsel for Complainant and the staff of the Board of
17 Registered Nursing may communicate directly with the Board regarding this stipulation and
18 settlement, without notice to or participation by Respondent or her counsel. By signing the
19 stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek
20 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails
21 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary
22 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal
23 action between the parties, and the Board shall not be disqualified from further action by having
24 considered this matter.

25 14. The parties understand and agree that facsimile copies of this Stipulated Settlement
26 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and
27 effect as the originals.
28

15. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Registered Nurse License No. 443841 issued to Respondent Jo Ann Gilyard is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

Severability Clause. Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

1. **Obey All Laws.** Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by Respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, Respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

Criminal Court Orders: If Respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

2. **Comply with the Board's Probation Program.** Respondent shall fully comply with

1 the conditions of the Probation Program established by the Board and cooperate with
2 representatives of the Board in its monitoring and investigation of the Respondent's compliance
3 with the Board's Probation Program. Respondent shall inform the Board in writing within no
4 more than 15 days of any address change and shall at all times maintain an active, current license
5 status with the Board, including during any period of suspension.

6 Upon successful completion of probation, Respondent's license shall be fully restored.

7 3. **Report in Person.** Respondent, during the period of probation, shall appear in
8 person at interviews/meetings as directed by the Board or its designated representatives.

9 4. **Residency, Practice, or Licensure Outside of State.** Periods of residency or
10 practice as a registered nurse outside of California shall not apply toward a reduction of this
11 probation time period. Respondent's probation is tolled, if and when she resides outside of
12 California. Respondent must provide written notice to the Board within 15 days of any change of
13 residency or practice outside the state, and within 30 days prior to re-establishing residency or
14 returning to practice in this state.

15 Respondent shall provide a list of all states and territories where she has ever been licensed
16 as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide
17 information regarding the status of each license and any changes in such license status during the
18 term of probation. Respondent shall inform the Board if she applies for or obtains a new nursing
19 license during the term of probation.

20 5. **Submit Written Reports.** Respondent, during the period of probation, shall submit
21 or cause to be submitted such written reports/declarations and verification of actions under
22 penalty of perjury, as required by the Board. These reports/declarations shall contain statements
23 relative to Respondent's compliance with all the conditions of the Board's Probation Program.
24 Respondent shall immediately execute all release of information forms as may be required by the
25 Board or its representatives.

26 Respondent shall provide a copy of this Decision to the nursing regulatory agency in every
27 state and territory in which she has a registered nurse license.

28 6. **Function as a Registered Nurse.** Respondent, during the period of probation, shall

engage in the practice of registered nursing in California for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

For purposes of compliance with the section, "engage in the practice of registered nursing" may include, when approved by the Board, volunteer work as a registered nurse, or work in any non-direct patient care position that requires licensure as a registered nurse.

The Board may require that advanced practice nurses engage in advanced practice nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

If Respondent has not complied with this condition during the probationary term, and Respondent has presented sufficient documentation of her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of Respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation shall apply.

7. Employment Approval and Reporting Requirements. Respondent shall obtain prior approval from the Board before commencing or continuing any employment, paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all performance evaluations and other employment related reports as a registered nurse upon request of the Board.

Respondent shall provide a copy of this Decision to her employer and immediate supervisors prior to commencement of any nursing or other health care related employment.

In addition to the above, Respondent shall notify the Board in writing within seventy-two (72) hours after she obtains any nursing or other health care related employment. Respondent shall notify the Board in writing within seventy-two (72) hours after she is terminated or separated, regardless of cause, from any nursing, or other health care related employment with a full explanation of the circumstances surrounding the termination or separation.

8. Supervision. Respondent shall obtain prior approval from the Board regarding Respondent's level of supervision and/or collaboration before commencing or continuing any employment as a registered nurse, or education and training that includes patient care.

Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

(a) Maximum - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.

(b) Moderate - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours Respondent works.

(c) Minimum - The individual providing supervision and/or collaboration has person-to-person communication with Respondent at least twice during each shift worked.

(d) Home Health Care - If Respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with Respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by Respondent with or without Respondent present.

9. **Employment Limitations.** Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Respondent shall not work in any other registered nursing occupation where home visits are required.

Respondent shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict Respondent from supervising licensed vocational nurses

and/or unlicensed assistive personnel on a case-by-case basis.

Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a Board approved continuing education program.

Respondent shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

If Respondent is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work.

10. **Complete a Nursing Course(s).** Respondent, at her own expense, shall enroll and successfully complete a course(s) relevant to the practice of registered nursing no later than six months prior to the end of her probationary term.

Respondent shall obtain prior approval from the Board before enrolling in the course(s). Respondent shall submit to the Board the original transcripts or certificates of completion for the above required course(s). The Board shall return the original documents to Respondent after photocopying them for its records.

11. **Cost Recovery.** Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the amount of \$8,000.00. Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than three months prior to the end of the probation term.

If Respondent has not complied with this condition during the probationary term, and Respondent has presented sufficient documentation of her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of Respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation will apply.

12. **Violation of Probation.** If Respondent violates the conditions of her probation, the Board after giving Respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation/suspension) of Respondent's license.

1 If during the period of probation, an accusation or petition to revoke probation has been
2 filed against Respondent's license or the Attorney General's Office has been requested to prepare
3 an accusation or petition to revoke probation against Respondent's license, the probationary
4 period shall automatically be extended and shall not expire until the accusation or petition has
5 been acted upon by the Board.

6 **13. License Surrender.** During Respondent's term of probation, if she ceases practicing
7 due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation,
8 Respondent may surrender her license to the Board. The Board reserves the right to evaluate,
9 Respondent's request and to exercise its discretion whether to grant the request, or to take any
10 other action deemed appropriate and reasonable under the circumstances, without further hearing.
11 Upon formal acceptance of the tendered license and wall certificate, Respondent will no longer be
12 subject to the conditions of probation.

13 Surrender of Respondent's license shall be considered a disciplinary action and shall
14 become a part of Respondent's license history with the Board. A registered nurse whose license
15 has been surrendered may petition the Board for reinstatement no sooner than the following
16 minimum periods from the effective date of the disciplinary decision:

17 (1) Two years for reinstatement of a license that was surrendered for any reason other
18 than a mental or physical illness; or

19 (2) One year for a license surrendered for a mental or physical illness.

20 **14. Physical Examination.** Within 45 days of the effective date of this Decision,
21 Respondent, at her expense, shall have a licensed physician, nurse practitioner, or physician
22 assistant, who is approved by the Board before the assessment is performed, submit an
23 assessment of the Respondent's physical condition and capability to perform the duties of a
24 registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If
25 medically determined, a recommended treatment program will be instituted and followed by the
26 Respondent with the physician, nurse practitioner, or physician assistant providing written reports
27 to the Board on forms provided by the Board.

28 If Respondent is determined to be unable to practice safely as a registered nurse, the

1 licensed physician, nurse practitioner, or physician assistant making this determination shall
2 immediately notify the Board and Respondent by telephone, and the Board shall request that the
3 Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall
4 immediately cease practice and shall not resume practice until notified by the Board. During this
5 period of suspension, Respondent shall not engage in any practice for which a license issued by
6 the Board is required until the Board has notified Respondent that a medical determination
7 permits Respondent to resume practice. This period of suspension will not apply to the reduction
8 of this probationary time period.

9 If Respondent fails to have the above assessment submitted to the Board within the 45-day
10 requirement, Respondent shall immediately cease practice and shall not resume practice until
11 notified by the Board. This period of suspension will not apply to the reduction of this
12 probationary time period. The Board may waive or postpone this suspension only if significant,
13 documented evidence of mitigation is provided. Such evidence must establish good faith efforts
14 by Respondent to obtain the assessment, and a specific date for compliance must be provided.
15 Only one such waiver or extension may be permitted.

16 **15. Participate in Treatment/Rehabilitation Program for Chemical Dependence.**
17 Respondent, at her expense, shall successfully complete during the probationary period or shall
18 have successfully completed prior to commencement of probation a Board-approved
19 treatment/rehabilitation program of at least six months duration. As required, reports shall be
20 submitted by the program on forms provided by the Board. If Respondent has not completed a
21 Board-approved treatment/rehabilitation program prior to commencement of probation,
22 Respondent, within 45 days from the effective date of the decision, shall be enrolled in a program.
23 If a program is not successfully completed within the first nine months of probation, the Board
24 shall consider Respondent in violation of probation.

25 Based on Board recommendation, each week Respondent shall be required to attend at least
26 one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous,
27 Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the Board.
28 If a nurse support group is not available, an additional 12-step meeting or equivalent shall be

added. Respondent shall submit dated and signed documentation confirming such attendance to the Board during the entire period of probation. Respondent shall continue with the recovery plan recommended by the treatment/rehabilitation program or a licensed mental health examiner and/or other ongoing recovery groups.

16. **Abstain from Use of Psychotropic (Mood-Altering) Drugs.** Respondent shall completely abstain from the possession, injection or consumption by any route of all controlled substances and all psychotropic (mood altering) drugs, including alcohol, except when the same are ordered by a health care professional legally authorized to do so as part of documented medical treatment. Respondent shall have sent to the Board, in writing and within fourteen (14) days, by the prescribing health professional, a report identifying the medication, dosage, the date the medication was prescribed, the Respondent's prognosis, the date the medication will no longer be required, and the effect on the recovery plan, if appropriate.

Respondent shall identify for the Board a single physician, nurse practitioner or physician assistant who shall be aware of Respondent's history of substance abuse and will coordinate and monitor any prescriptions for Respondent for dangerous drugs, controlled substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report to the Board on a quarterly basis Respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of any such substances.

The Board may require the single coordinating physician, nurse practitioner, or physician assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive medicine.

17. **Submit to Tests and Samples.** Respondent, at her expense, shall participate in a random, biological fluid testing or a drug screening program which the Board approves. The length of time and frequency will be subject to approval by the Board. Respondent is responsible for keeping the Board informed of Respondent's current telephone number at all times. Respondent shall also ensure that messages may be left at the telephone number when she is not available and ensure that reports are submitted directly by the testing agency to the Board, as

1 directed. Any confirmed positive finding shall be reported immediately to the Board by the
2 program and Respondent shall be considered in violation of probation.

3 In addition, Respondent, at any time during the period of probation, shall fully cooperate
4 with the Board or any of its representatives, and shall, when requested, submit to such tests and
5 samples as the Board or its representatives may require for the detection of alcohol, narcotics,
6 hypnotics, dangerous drugs, or other controlled substances.

7 If Respondent has a positive drug screen for any substance not legally authorized and not
8 reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board
9 files a petition to revoke probation or an accusation, the Board may suspend Respondent from
10 practice pending the final decision on the petition to revoke probation or the accusation. This
11 period of suspension will not apply to the reduction of this probationary time period.

12 If Respondent fails to participate in a random, biological fluid testing or drug screening
13 program within the specified time frame, Respondent shall immediately cease practice and shall
14 not resume practice until notified by the Board. After taking into account documented evidence
15 of mitigation, if the Board files a petition to revoke probation or an accusation, the Board may
16 suspend Respondent from practice pending the final decision on the petition to revoke probation
17 or the accusation. This period of suspension will not apply to the reduction of this probationary
18 time period.

19 18. **Mental Health Examination.** Respondent shall, within 45 days of the effective date
20 of this Decision, have a mental health examination including psychological testing as appropriate
21 to determine her capability to perform the duties of a registered nurse. The examination will be
22 performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by
23 the Board. The examining mental health practitioner will submit a written report of that
24 assessment and recommendations to the Board. All costs are the responsibility of Respondent.
25 Recommendations for treatment, therapy or counseling made as a result of the mental health
26 examination will be instituted and followed by Respondent.

27 If Respondent is determined to be unable to practice safely as a registered nurse, the
28 licensed mental health care practitioner making this determination shall immediately notify the

1 Board and Respondent by telephone, and the Board shall request that the Attorney General's
2 office prepare an accusation or petition to revoke probation. Respondent shall immediately cease
3 practice and may not resume practice until notified by the Board. During this period of
4 suspension, Respondent shall not engage in any practice for which a license issued by the Board
5 is required, until the Board has notified Respondent that a mental health determination permits
6 Respondent to resume practice. This period of suspension will not apply to the reduction of this
7 probationary time period.

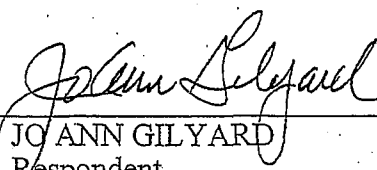
8 If Respondent fails to have the above assessment submitted to the Board within the 45-day
9 requirement, Respondent shall immediately cease practice and shall not resume practice until
10 notified by the Board. This period of suspension will not apply to the reduction of this
11 probationary time period. The Board may waive or postpone this suspension only if significant,
12 documented evidence of mitigation is provided. Such evidence must establish good faith efforts
13 by Respondent to obtain the assessment, and a specific date for compliance must be provided.
14 Only one such waiver or extension may be permitted.

15 19. **Therapy or Counseling Program.** Respondent, at her expense, shall participate in
16 an on-going counseling program until such time as the Board releases her from this requirement
17 and only upon the recommendation of the counselor. Written progress reports from the counselor
18 will be required at various intervals.

19 ACCEPTANCE

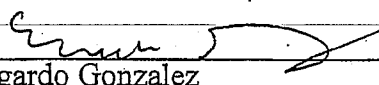
20 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
21 discussed it with my attorney, Edgardo Gonzalez. I understand the stipulation and the effect it
22 will have on my Registered Nurse License. I enter into this Stipulated Settlement and
23 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
24 Decision and Order of the Board of Registered Nursing.

25
26 DATED: 7/18/12


JO ANN GILYARD
Respondent

1 I have read and fully discussed with Respondent Jo Ann Gilyard the terms and conditions
2 and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve
3 its form and content.

4 DATED: 7-18-12


Edgardo Gonzalez
Attorney for Respondent

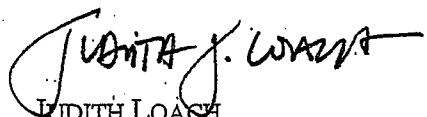
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7 ENDORSEMENT

8 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
9 submitted for consideration by the Board of Registered Nursing of the Department of Consumer
10 Affairs.

11 Dated: 7-18-2012

Respectfully submitted,

13 KAMALA D. HARRIS
Attorney General of California
14 FRANK H. PACOE
Supervising Deputy Attorney General

15 
16 JUDITH LOACH
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 2012-433

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JUDITH J. LOACH

Deputy Attorney General
4 State Bar No. 162030
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E-mail: Judith.Loach@doj.ca.gov
7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No.

2012-433

13 **JO ANN GILYARD**
1177 Dove Way
14 **Fairfield, CA 94533**
Registered Nurse License No. 443841

ACCUSATION

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her
20 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
21 of Consumer Affairs.

22 2. On or about August 31, 1989, the Board of Registered Nursing issued Registered
23 Nurse License Number 443841 to Jo Ann Gilyard ("Respondent"). The Registered Nurse
24 License was in full force and effect at all times relevant to the charges brought herein and will
25 expire on August 31, 2013, unless renewed.

26 ///

27 ///

28 ///

JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing ("Board"), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

RELEVANT STATUTES AND REGULATIONS

6. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct, which includes, but is not limited to, the following:

"(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions."

...

7. California Code of Regulations, title 16, section 1442, states:

"As used in Section 2761 of the code, 'gross negligence' includes an extreme departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent registered nurse. Such an extreme departure means the repeated failure to provide nursing care as required or failure to provide care or to exercise ordinary precaution in a single situation which the nurse knew, or should have known, could have jeopardized the client's health or life."

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"(4) Delegates tasks to subordinates based on the legal scopes of practice of the subordinates and on the preparation and capability needed in the tasks to be delegated, and effectively supervises nursing care being given by subordinates.

"(5) Evaluates the effectiveness of the care plan through observation of the client's physical condition and behavior, signs and symptoms of illness, and reactions to treatment and through communication with the client and health team members, and modifies the plan as needed.

"(6) Acts as the client's advocate, as circumstances require, by initiating action to improve health care or to change decisions or activities which are against the interests or wishes of the client, and by giving the client the opportunity to make informed decisions about health care before it is provided."

10. California Code of Regulations, title 16, section 1443, states:

"As used in Section 2761 of the code, 'incompetence' means the lack of possession of or the failure to exercise that degree of learning, skill, care and experience ordinarily possessed and exercised by a competent registered nurse as described in Section 1443.5."

COST RECOVERY

11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Under the Influence of Drugs and/or Alcohol)

12. Respondent is subject to discipline for unprofessional conduct under Code sections 2761 and 2762 (a) and (b), in that she was under the influence of marijuana¹ and/or alcohol while performing her duties as a registered nurse. The facts in support of this cause for discipline are as follows:

¹ Marijuana is a Schedule I controlled substance as designated by Health and Safety Code section 11054(d)(13) and is categorized as a dangerous drug pursuant to Code section 4022.

1 a. At all relevant times, Respondent was employed as a registered nurse at Kaiser
2 Foundation Hospital ("Kaiser") in Oakland, California.

3 b. On or about June 22, 2009, Respondent admitted herself to the Kaiser Chemical
4 Drug Rehabilitation Program ("CDRP") in Oakland as a result of substance abuse problems.
5 Respondent completed an Intake Questionnaire for CDRP on June 19, 2009, and therein admitted
6 that in the previous twelve months, she was high on drugs (marijuana) and alcohol while working
7 and/or having withdrawal symptoms from these substances while working.

8 SECOND CAUSE FOR DISCIPLINE

9 (Gross Negligence – Failure to Follow Sterile Procedures)

10 13. Respondent is subject to discipline for gross negligence pursuant to Code section
11 2761(a)(1), in that she failed to follow sterile procedures for patients under her care. The facts in
12 support of this cause for discipline are as follows:

13 a. On or about February 5, 2009, Respondent was assigned to start an intravenous line
14 on a patient. While doing so, Respondent admitted that she brushed hair from her face and/or
15 moved the patient's phone without changing her gloves.

16 b. On or about December 14, 2009, Respondent was assigned to change the dressing on
17 a Kaiser patient who had a central line. In doing so, Respondent failed to wear a mask with said
18 precaution required to ensure that a nurse does not breathe into and contaminate the insertion site.

19 THIRD CAUSE FOR DISCIPLINE

20 (Gross Negligence – Delay in Administration of Pain Medication)

21 14. Respondent is subject to discipline for gross negligence pursuant to Code section
22 2761(a)(1), in that she failed to timely administer pain medication to a terminally ill patient. The
23 facts in support of this cause for discipline are as follows:

24 a. On June 11, 2009, Respondent was assigned to a "comfort care" patient. The
25 patient's physician had ordered a pain controlled device ("PCA") for constant infusion of pain
26 medication as needed.

27 b. Respondent did not set up the PCA device until three and one-half hours after it was
28 ordered by the patient's physician.

1 FOURTH CAUSE FOR DISCIPLINE

2 (Incompetence – Failure to Timely Administer Blood Products)

3 15. Respondent is subject to discipline for incompetence pursuant to Code section
4 2761(a)(1), in that her actions resulted in the delay of administering a blood transfusion to a
5 patient under her care. The facts in support of this cause for discipline are as follows:

6 a. On November 4, 2009, Respondent was assigned to a patient who needed to have a
7 blood transfusion. Respondent was informed in the morning that the patient's intravenous site
8 needed to be changed prior to the transfusion.

9 b. The start of the transfusion in the afternoon was delayed, as the patient's intravenous
10 line had infiltrated, necessitating its replacement prior to the administration of blood products.

11 FIFTH CAUSE FOR DISCIPLINE

12 (Gross Negligence – Failure to Chart Medications Administered)

13 16. Respondent is subject to discipline for gross negligence pursuant to Code section
14 2761(a)(1), in that on December 2, 2009, she failed to chart the administration of an antibiotic
15 given to a patient under her care and failed to give the patient a multivitamin as ordered by the
16 physician.

17 SIXTH CAUSE FOR DISCIPLINE

18 (Gross Negligence – Failure to Monitor Diabetic Patient)

19 17. Respondent is subject to discipline for gross negligence pursuant to Code section
20 2761(a)(1), in that she failed to appropriately monitor a diabetic patient under her care. The facts
21 in support of this cause for discipline are as follows:

22 a. On or about December 24, 2009, at approximately 1:30 p.m., Respondent checked the
23 blood sugar on a diabetic patient and noted that it was at a critically low value of 43, with a
24 repeated blood sugar reported to be 41.²

25 b. Instead of following Kaiser's policy regarding management of low blood glucose and
26 the physician orders, Respondent assisted a nurse with a new admission. The Assistant Manager

27 ² A normal blood glucose is from 70 to 140 mg/dl. Kaiser's protocol required that a
28 physician be notified if a patient's blood glucose level was less than 50 mg/dl.

1 of Nursing responded to the patient's room and found that he was extremely diaphoretic and was
2 dozing off. She ordered Respondent to do an immediate blood draw for a serum blood glucose,
3 while she administered fluids and medications to elevate the patient's blood sugar. The serum
4 glucose drawn by Respondent at 2:00 p.m., revealed that the patient's blood glucose was 27.

5 DISCIPLINARY CONSIDERATIONS

6 18. On or about February 10, 2009, Kaiser placed Respondent on a three (3) day
7 suspension for failure to follow the infection control policy and procedures. The facts in support
8 of this are set forth above in paragraph 13.

9 19. On or about March 19, 2009, Respondent was placed on non-duty status for week as a
10 result of her second failure to achieve a passing score on the medication math test for registered
11 nurses, pursuant to Kaiser's policy.

12 PRAYER

13 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
14 and that following the hearing, the Board of Registered Nursing issue a decision:

- 15 1. Revoking or suspending Registered Nurse License Number 443841, issued to Jo Ann
16 Gilyard;
- 17 2. Ordering Jo Ann Gilyard to pay the Board of Registered Nursing the reasonable costs
18 of the investigation and enforcement of this case, pursuant to Business and Professions Code
19 section 125.3;
- 20 3. Taking such other and further action as deemed necessary and proper.

21 DATED: February 15, 2012

22 Louise R. Bailey
23 LOUISE R. BAILEY, M.ED., RN
24 Interim Executive Officer
25 Board of Registered Nursing
26 Department of Consumer Affairs
27 State of California
28 Complainant

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